

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

X/16903

PCT

## WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

20 JUNE 2005

Applicant's or agent's file reference  
see form PCT/ISA/220

International application No.  
PCT/US2004/024387

International filing date (day/month/year)  
18.08.2004

Priority date (day/month/year)  
20.08.2003

International Patent Classification (IPC) or both national classification and IPC  
C07D413/04, A61K47/22

Applicant  
ELI LILLY AND COMPANY

Date of mailing  
(day/month/year) see form PCT/ISA/210 (second sheet)

### FOR FURTHER ACTION See paragraph 2 below

REQUEST  
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#### 1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

#### 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

#### 3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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IAP20 Rec'd PCT/P10 25 JAN 2006

## Box No. I Basis of the opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
  - This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material:
    - a sequence listing
    - table(s) related to the sequence listing
  - b. format of material:
    - in written format
    - in computer readable form
  - c. time of filing/furnishing:
    - contained in the international application as filed.
    - filed together with the international application in computer readable form.
    - furnished subsequently to this Authority for the purposes of search.
3.  In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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**Box No. II Priority**

1.  The following document has not been furnished:

copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).  
 translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2.  This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	1-15
	No: Claims	
Inventive step (IS)	Yes: Claims	4-11
	No: Claims	1-3,12-15
Industrial applicability (IA)	Yes: Claims	1-15
	No: Claims	

2. Citations and explanations

see separate sheet

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**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING  
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/US2004/024387

Re Item V.

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1 The following document is referred to in this communication:

D1 : WO 00/47188 A (GSCHNEIDNER DAVID ; EMISPHERE TECH INC (US))  
17 August 2000 (2000-08-17)

2 The presently claimed subject matter is considered novel. None of the documents cited in the search report specifically mentions a compound corresponding to those as defined in the claims.

D1 relating to oxadiazole compounds for the delivery of active agents is considered as the closest prior art. D1 suggests compounds wherein R<sup>1</sup> is inter alia an aromatic heterocycle, thus the general formula disclosed in D1 embraces the compounds as defined in present claims 1-3.

The subject matter of claims 1-3 is therefore seen as a selection from the compounds suggested in D1, the selection residing in the choice of particular heterocycles (pyridine, thiophene) for R<sup>1</sup> in the formula I of D1. In the absence of any unexpected or non-obvious features, the selection of further compounds from those as defined by formula I in D1 to solve the same technical problem as already addressed in D1, is considered obvious and does not involve an inventive step.

There are no restrictions as to the active agents in D1 (cf. D1, page 9, line 13- page 10, line 22). The compositions of present claims 12-15 wherein further specific active agents are used, are therefore also considered obvious.

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